Efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts. Green Paper

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PURPOSE: to launch a broad consultation among interested parties on how to improve the enforcement of monetary claims in Europe.

BACKGROUND: in the Treaty of Amsterdam, the European Union set itself the goal of gradually creating an area of freedom, security and justice. In the field of civil justice, Article 65 of the EC-Treaty envisages amongst other things the taking of measures to improve and simplify the recognition and enforcement of judgments in civil and commercial cases. More recently, the Hague Programme strengthening freedom, security and justice in the European Union, which was adopted by the Heads of Government in December 2004, made the continued implementation of the programme of measures on mutual recognition a main priority, emphasizing that the effectiveness of the existing instruments on mutual recognition of decisions in civil and commercial matters has to be strengthened by work in the area of the enforcement of judgments.

Enforcement law has often been termed the “Achilles’ heel” of the European Civil Judicial Area. While a number of Community instruments provide for the jurisdiction of the courts, the procedure to have judgments recognised and declared enforceable and mechanisms for cooperation of courts in civil procedures, no legislative proposal has yet been made for actual measures of enforcement. To date, execution on a court order after it has been declared enforceable in another Member State remains entirely a matter of national law.

Current fragmentation of national rules on enforcement severely hampers cross-border debt collection. Creditors seeking to enforce an order in another Member State are confronted with different legal systems, procedural requirements and language barriers which entail additional costs and delays in the enforcement procedure. Under existing Community instruments, it is not possible to obtain a bank attachment which can be enforced throughout the European Union. The problems of cross-border debt recovery risk constituting an obstacle to the free circulation of payment orders within the European Union and an impediment for the proper functioning of the Internal Market. Late payment and non-payment jeopardises the interests of businesses and consumers alike. The differences in the efficiency of debt-recovery within the European Union also risk distorting competition among businesses operating in Member States as between efficient systems of enforcing payment orders and those where this is not the case. Community action on this subject therefore needs to be considered.

CONTENT: this Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts. The purpose of this Green Paper is to launch a broad consultation among interested parties on how to improve the enforcement of monetary claims in Europe. The Green Paper describes the problems of the current situation and proposes the creation of a European system for the attachment of bank accounts as a possible solution.

The work of the Commission has been carried out on the basis of the Study on making more efficient the enforcement of judicial decisions within the European Union and of the outcome of meetings with national experts, held in 2003 and 2004.

A possible solution to the problems of debt-recovery outlined above would be to **create a European procedure for the attachment of bank accounts** which would allow a creditor in certain circumstances to secure the payment of a sum of money due to him by preventing the removal or transfer of funds held to the credit of his debtor in one or several bank accounts within the territory of the European Union. The attachment order under this system would be a protective measure issued by a court in summary proceedings which would only allow a creditor to block funds, not to affect their transfer.

The decision whether or not to put forward a legislative proposal for the attachment of bank accounts will be subject to an impact assessment in which will be analysed the extent of the problems of cross-border debt recovery and the likely effectiveness of possible alternatives to a European instrument. An obvious alternative to Community action would be to maintain the status quo; another might be to abolish the exequatur procedure for attachment orders without at the same time establishing common standards for the procedure of granting attachment orders. The possibilities outlined in the Green Paper are not intended to prejudice the result of the impact assessment.

There are two different possible approaches to create a European attachment of bank accounts:

1. the first would consist of designing a **new and self-standing European procedure** which would be available to citizens and companies in addition to existing national procedures for banking seizures;

2. alternatively, Member States' national rules on the attachment of bank accounts could be harmonised by way of a **European Directive** with the aim of ensuring that the same rules and standards for the granting of an attachment order apply throughout the European Union.

The decision whether or not to initiate legislation in this area will be subject to an impact assessment in which will be analysed the extent of the problems of cross-border debt recovery and the effectiveness of possible alternatives to European rules.

Irrespective of the type of instrument chosen, a Commission proposal on the attachment of bank accounts would have to deal with a number of issues, as for example:

- the procedure for obtaining an attachment order would need to be clarified;

- the amount and possible limits of the attachment order would have to be defined;

- the effects of the order and procedural safeguards for the debtor would need to be assessed.

The Commission invites interested parties to submit comments before 31 March 2007. The Commission intends to organise a public hearing on the subject matter of the Green Paper. All those responding will be invited to attend. A Green Paper on how to improve the transparency of the debtor’s assets will follow by the end of 2007.